

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI

ALLISON HARNDEN, individually	)	
and as Plaintiff ad Litem for	)	
BENJAMIN MICHAEL CANTWELL, deceased,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:10-CV-00263-NKL
	)	
CASS COUNTY, MISSOURI, et al.,	)	
	)	
Defendants.	)	

**JUDGMENT APPROVING WRONGFUL DEATH SETTLEMENT**

NOW ON this 18th day of November, 2010, the Application for Approval of Wrongful Death Settlement comes up for hearing. Plaintiff Allison Harnden appears in person and by her attorney, Wes Shumate. Defendants Cass County and Diehl appear by and through their counsel, David S. Baker. Defendants Lawrence Hayes, M.D., Donna Moss and Advanced Correctional Healthcare, Inc. appear by and through their counsel, Michael A. Childs.

Plaintiff and Defendants agree to waive a jury trial and submit all issues contained within the Application for Approval of Wrongful Death Settlement to the Court for determination, which waiver is expressly approved by the Court. The parties present, having advised the Court that Plaintiff has, subject to the approval of the Court, agreed to a compromised settlement of any and all claims she has or may have against Defendants Diehl, Cass County (including its officers, agents, servants, officials and employees), Moss, Hayes and Advanced Correctional Healthcare, Inc. (including its officers, agents, servants, officials and employees), and all other persons, individuals or entities as a result of or relating to or arising out of the death of Benjamin M. Cantwell, who died on or about March 26, 2008, in Cass County, Missouri.

The terms and conditions of the aforesaid settlement are the payment of the total sum of *One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00)* to Plaintiff in exchange for which Plaintiff shall execute a Release and Settlement Agreement which extinguishes any and all claims which she or anyone else has or may hereafter have against Dwight Diehl, Cass County, Missouri (including all of its agents, servants, employees, officials and representatives), Lawrence Hayes, M.D., Donna Moss, and Advanced Correctional Healthcare, Inc. (including all of its agents, servants, employees, officials and representatives) and all others arising from, related to, or in any way connected with the death of Benjamin M. Cantwell. It is further expressly understood that the total settlement sum of \$150,000.00 will be funded by a \$75,000.00 payment on behalf of Defendants Diehl and Cass County, and a \$75,000.00 payment on behalf of Defendants Moss, Hayes and Advanced Correctional Healthcare, Inc. Further, the evidence. Further, the evidence presented to the Court is that Allison Harnden (decedent's wife) and Mike Cantwell (decedent's father) are the only individuals who are entitled to share in the proceeds of this settlement as set forth in R.S.Mo. § 537.080.1, and that Mike Cantwell (decedent's father) has expressly and unambiguously waived any claim he might have to the proceeds of this wrongful death settlement, which waiver is accepted by the Court.

Plaintiff has entered into a contract with her counsel and represents that a fair and reasonable allocation of attorneys' fees and expenses in connection with this matter to date is \$66,446.33, and that said amount is approved and shall be paid from the proceeds of this settlement as set forth below.

WHEREUPON, the Court having heard evidence and having been fully advised in the premises upon the Application for Approval of Wrongful Death Settlement, hereby orders, adjudges and decrees as follows:

1. The settlement between Plaintiff and Defendants Diehl, Cass County (including its agents, servants, employees, officials and representatives), Hayes, Moss and Advanced Correctional Healthcare, Inc. (including its agents, servants, employees, officials and representatives) in the total amount of *One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00)* is fair and reasonable, is in the best interest of Plaintiff, and is hereby approved.

2. The only persons entitled to share under the laws of the State of Missouri in the apportionment of this settlement are: Allison Harnden (decedent's wife) and Mike Cantwell (decedent's father). Further, Mike Cantwell (decedent's father) has specifically and unambiguously waived any claim or request to participate in distribution of the settlement proceeds, and that waiver is accepted by the Court.

3. Plaintiff has freely, knowingly and voluntarily waived her right to a jury trial as to Defendants and has consented to the submission of all issues regarding her proposed settlement to the Court for determination, which waiver is accepted by the Court.

4. Pursuant to the provisions of R.S.Mo. § 537.095, all persons entitled to bring an action for the wrongful death of Benjamin M. Cantwell, deceased, have had an opportunity to join in this action and the settlement, and Plaintiff has exercised due diligence in providing written notification concerning the hearing regarding the Application for Approval of Wrongful Death Settlement to all persons entitled to bring an action for the wrongful death of Benjamin M. Cantwell and/or participate in the settlement proceeds.

5. The amount of \$66,446.33 in attorneys' fees and expenses is fair and reasonable, and shall be paid from the settlement proceeds.

6. The settlement proceeds shall be apportioned and distributed as follows:

- a. \$83,553.67 to Allison Harnden;
- b. \$66,446.33 for attorney's fees and expenses to *Davis, Bethune & Jones, LLC*.

7. Allison Harnden, on behalf of herself individually and on behalf of all others who may be eligible to participate in the settlement and/or distribution of the proceeds of this case, is ordered to execute a Release and Settlement Agreement in favor of Defendants Diehl, Cass County (including its agents, servants, employees, representatives and officials), Hays, Moss and Advanced Correctional Healthcare, Inc. (including its agents, servants, employees, representatives and officials) releasing them and all others from any and all liability, claims, demands and actions arising from, related to, or in any way connected with the death of Benjamin M. Cantwell.

8. Plaintiff and her counsel shall collect and receipt for the payment of these settlement proceeds.

9. Plaintiff and her counsel shall acknowledge satisfaction of said settlement proceeds.

10. Plaintiff shall execute and file a Stipulation of Dismissal With Prejudice as to all Defendants, said Stipulation shall recite that all parties are to bear their own costs and expenses incurred in the prosecution and/or defense of this matter.

**IT IS SO ORDERED.**

s/ NANETTE K. LAUGHREY  
NANETTE K. LAUGHREY  
UNITED STATES DISTRICT JUDGE

Dated: November 18, 2010